THE HON'BLE SRI JUSTICE C.V. RAMULU

25th day of July, 2006

W.P.No.6530 of 2005

Between:

A.S. Rahmatullah & others … Petitioners

and

The Andhra Pradesh State
Cooperative Tribunal, Hyderabad
and others. … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.6530 of 2005

ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records relating to O.P.No.89 of 2003 on the file of the A.P. State Cooperative Tribunal, Hyderabad and quash the Order dated 15-2-2005 passed therein as being arbitrary and illegal.

Petitioner No.8 is Mustafa Roseland Cooperative Housing Society, Hyderabad and petitioners 1 to 7 are its President and Executive Members. According to them, they have been elected in the elections conducted by the 5th respondent on 29-12-2002. The results of the said election were declared on 3-7-2003.

Earlier, the Managing Committee of the 8th petitioner-society, which was elected in the year 1999, was superseded by the 4th respondent vide his Proceedings dated 11-4-2001. He further appointed five (5) Members as Persons-incharge Committee. On account of the representation made by majority members, who were aggrieved by various malpractices resorted to by the said persons-incharge committee, the 4th respondent by an Order dated 16-10-2001 appointed one P. Ram Reddy, Cooperative Sub-Registrar as person-incharge, on expiry of the persons-incharge committee appointed by him earlier. Against the said order, the erstwhile person-incharge/Chairman and others approached the Government by way of revision and obtained an order for their extension. The said

Order of the Government was questioned in Writ Petition No.24396 of 2001 and this Court suspended the Order of the Government on 8-2-2002. Another Writ Petition in W.P.No.21190 of 2001 was also filed for a direction to conduct elections and till then to appoint an official person-incharge and also not to take policy decisions. Both the said Writ Petitions were disposed of by a common Order on 8-2-2002 giving a clear finding setting at rest the controversy as to who was incharge of the affairs at that time and the scope of their authority, as under:

> "In view of the above, it would be reasonable to infer that Sri Ram Reddy is conducting the affairs of the society. It is needless to mention that whoever is the Special Officer, be it the Special Officers Committee or members appointed by the second respondent or the official acting as person-in-charge, is not entitled under law to take any major policy decision, including allotment of plots, which is the major activity in a society like the present one and the person-in-charge shall keep this in mind".

The bye-laws of the 8th petitioner-society do not provide for conduct of election by the incumbent committee. Therefore, the bye-laws have to be first amended in accordance with Section 16 of the Act to invoke the amended clause (3) of sub-section (2) of Section 31 of the Act; but, no such amendment was attempted to. As such, there is no option except to have recourse to the proviso of clause (c) of Section 31(2) of the Act. In view of the above, the 8th petitioner-society represented by the then person-incharge requested the Deputy Registrar to hold elections in April,2002 and the Deputy Registrar concerned, in turn, requested the 3rd respondent-Election Authority under the Rules to issue election notification. Therefore, the person-incharge (P.Ram Reddy), at the request of the 3rd respondent-Election Authority issued the election notification dated 4-7-2002 and the said notification was never questioned by anyone. He initially appointed one Jagan Mohan, Cooperative Sub-Registrar as Election Officer. However, the voters'

list could not be finalized, as there was a controversy as to the eligible members, in view of the amendments to Sections 24 and 25 of the Act and also as to the payment of additional share capital. Two different lists were submitted; one by the superseded elected body and the other by the erstwhile unofficial Person-Incharge Committee separately. The first list consisted 165 persons and the second one 60 only. Therefore, the District Cooperative Officer had decided to adjudicate the dispute and to enable him to decide the same, the election authority by an order dated 26-8-2002 postponed the elections till such decision is taken. However, the Deputy Registrar, on the directions of the District Cooperative Officer, appointed P. Ram Reddy, Cooperative Sub-Registrar to conduct an enquiry, verify and submit a report, by his Memo dated 25-9-2002. In turn, the Cooperative Sub-Registrar, requested the Election Officer to furnish the list available with him by letter dated 3-10-2002 and then the Election Officer gave two lists to him on 10-10-2002. The Enquiry Officer also gave a notice dated 12-10-2002 t o Khadir Ahmed Khan, Chairman of unofficial Person-incharge Committee to produce cash book and receipt book for verification and also to the erstwhile Secretary of elected committee to produce the records. Ultimately, the Enquiry Officer submitted his report and recommendations along with a list of 206 eligible voters to the Deputy Registrar on 26-10-2002. According to the petitioners, on knowing about the notice dated 12-10-2002 issued by the Enquiry Officer, Khader Ahmed Khan created a false report as if the election was conducted by him through an alleged Election Officer appointed by him, namely, P. Ghouse Mohiuddin, without any voters' list, without any notice to anyone and without any jurisdiction. In fact, by that date, the 3rd respondent-Election Authority issued Election Notification

dated 4-7-2002 and the same was subsisting.

The elections created on paper by Khadir Ahmed Khan are not only bogus, but are totally without any authority, apart from being void and *non est*. No records pertaining to the alleged election were produced at all. Respondent No.4 had appointed P. Ram Reddy as an official person-incharge and this fact was supported by the findings of this Court in the Order dated 8-2-2002 in W.P.Nos.24396 and 21190 of 2001. Respondent No.3-Election Authority also issued Election Notification dated 4-7-2002, which was never questioned. Further, the Committee cannot conduct elections without enabling provision in the bye-laws as contemplated by Section 32(2)(c) of the Act. In fact, they have filed a Writ Petition before this Court and the same was disposed of directing them to file Election Petition before the appropriate forum. Therefore, the 2nd respondent filed O.P.No.89 of 2003 before the 1st respondent-Tribunal challenging the elections of the 8th petitioner-Housing Society held on 29-12-2002 and the election results declared on 3-7-2003. A detailed written statement was filed by the petitioners herein before the Tribunal and on the basis of the pleadings of both the parties, the following points were framed for consideration by the Tribunal:

1. Whether the election proceedings dt.10.12.02 and election held on 29.12.02 and election declared on 3.7.03 are improper and null and void ?
2. Whether the respondents 1 to 7 election held on 29.12.02 and declaration of results on 3.7.03 are in accordance with rules and procedure, if so, such elections are valid while the petitioners elected body (elected on 19.10.02) is existing ?
3. Whether the election dated 19.10.02 conducted by the Special Committee is valid ?

There is no necessity of going into all the details. Insofar as point No.3 is concerned, it was held that the counter elections

dated 19-10-2002 are not challenged by any of the members in the society; therefore, the Tribunal need not give finding about the validity of election results dated 19-10-2002 and it is for the Registrar to recognize or de-recognize the said elections by passing a reasoned order. The relief in the Election Petition is limited to determine the validity of elections conducted by respondents 8 to 10 before the Tribunal. As such, no finding was given about the validity of election dated 19-10-2002, since it was not challenged before the Tribunal; whereas, point No.3 has rightly been framed 'whether the election dated 19-10-2002 conducted by the Special Committee is valid'.

The whole burden of song of the petitioners herein is that the elections conducted on 19-10-2002 are not valid and there was no election notification and there was no authority for conducting such elections. This is also their case in the written statement filed in O.P.No.89 of 2003. The Tribunal being a fact finding body, while setting aside the election of the petitioners held on 10-12-2002 ought to have taken into consideration the plea that the elections conducted on 19-10-2002 either valid or invalid, on the facts as well as on law. It simply brushed aside saying that it is for the Registrar to affirm or reject the elections conducted on 19-10-2002. It is unfortunate that such a stand was taken by the Tribunal. The Election Petition must be disposed of as that of a suit by following the provisions of Civil Procedure Code to the extent possible. It has to frame contentious issues arising between the parties. Further, having rightly framed point No.3 in this regard, the Tribunal failed to address the same after appreciating the evidence on record. Absolutely, there is no evidence produced by P.W.1. Even the deposition of P.W.1, does not inspire the confidence of the Court to come to the conclusion that there was a valid election conducted on 19-10-2002. On this ground alone, the

matter requires to be remanded for fresh consideration. Therefore, the impugned Order is set aside and the matter is remanded to the 1st respondent-Tribunal for consideration afresh. All the parties may be permitted to lead evidence, both oral and documentary and the Tribunal may also consider framing of some more points, if necessary. The Tribunal shall dispose of the matter afresh, within a period of three months from the date of receipt of a copy of this order.

The Writ Petition is allowed to the extent indicated above and the matter is remitted back to the 1st respondent-Tribunal. No order as to costs.

25-7-2006

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